



United States Tax Court

Washington, DC 20217

ERIC MAURICE PICKNEY,

Petitioner

v.

Docket No. 5050-19.

Commissioner of Internal Revenue,

Respondent

ORDER

On December 29, 2020, respondent filed a first request for admissions.

On March 2, 2021, petitioner served on respondent his response to respondent's request for admissions.

On March 23, 2021, respondent filed a motion to review sufficiency of petitioner's answers to respondent's request for admissions.

On May 13, 2021, the Court granted respondent's March 23, 2021 motion and ordered petitioner to file amended answers to respondent's requests for admissions 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 32, 34, and 41.

On June 14, 2021, petitioner filed a first amended response to respondent's request for admissions.

On August 24, 2021, respondent filed a motion to review the sufficiency of petitioner's amended answers to respondent's requests for admission. Respondent's motion requests that the Court deem respondent's requests for admissions admitted, or in the alternative, order petitioner to serve further amended answers to respondent's first request for admissions.

Rule 90(c) provides:

Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the

Served 09/14/21

requesting party: (1) A written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so; or (2) an objection, stating in detail the reasons therefor.

* * *

A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify an answer or deny only a part of a matter, such party shall specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that such party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such party to admit or deny. A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; such party may, subject to the provisions of paragraph (g) of this Rule, deny the matter or set forth reasons why such party cannot admit or deny it. An objection on the ground of relevance may be noted by any party but it is not to be regarded as just cause for refusal to admit or deny.

Rule 90(e) provides:

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, then it may order either that the matter is admitted or that an amended answer be served. In lieu of any such order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

Request 12

Request: “You operated Daitech Tax as a Schedule C sole proprietorship until 2011 when Daitech Tax became an S-Corporation.”

Petitioner's amended response: "Admitted as to the fact that Pinckney operated an incorporated tax business known as Daitech Tax Services, LLC. The rest of the request is denied on the basis that the United States maintains all records seized in this matter. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered."

Court's ruling: Respondent's request is within the personal knowledge of petitioner and is thus improperly answered. Petitioner's response is evasive and does not fairly meet the substance of the requested admission, nor does petitioner specify so much of it as is true and deny or qualify the remainder.

The Court will deem this request admitted.

Request 13

Request: "You reported earnings from Daitech Tax on a Schedule C for the years at issue."

Petitioner's amended response:

Admitted as to the fact that Pinckney did report earning [sic] based upon earnings from Daitech Tax Services, LLC. The IRS has formed a vague question that cannot be accurately answered without a comprehensive review of all records maintained by the United States. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.

Court's ruling: Respondent's request should be within petitioner's personal knowledge and is thus improperly answered.

The Court will deem this request admitted.

Request 14

Request: "Your individual Federal income tax returns filed for the taxable years 2008 and 2009 included Forms Schedule C reporting income and expenses from Daitech Tax."

Petitioner's amended response:

Admitted as to the fact that Pinckney did file tax returns for the years

of 2008 and 2009 that included expenses for Daitech Tax Services. The remaining part of this request is denied because the United States is in possession of all the records in this matter where Pinckney has filed amended returns that the IRS has not rejected. Accordingly, Pinckney cannot provide a truthful answer from memory, and the remaining portion of this request is denied accordingly.

Court's ruling: Respondent's request concerns information about petitioner's original income tax returns, not subsequently filed returns. The requested information is, or should be, within the personal knowledge of petitioner.

The Court will deem this request admitted.

Request 15

Request: "Your taxable year 2008 Federal income tax return was filed on or about May 12, 2009."

Petitioner's amended response:

Admitted to the fact that Pinckney did file taxes for the years of 2008 and 2009 on or about May 12, 2009. Any remaining portion is [sic] denied as the IRS has accepted and not rejected Pinckney's amended returns where the balances in question are now in dispute. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.

Court's ruling: It appears that petitioner willfully misreads the request based on amended returns. The request is for information that is, or should be, within the personal knowledge of the petitioner.

The Court will deem this request admitted.

Request 16

Request: "On your original, individual Federal income tax return for the taxable year 2008, you reported, via Schedule C, \$35,860.00 of net profit from Daitech Tax."

Petitioner's amended response: "Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter

and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: Respondent attached to the August 24, 2021 motion to review sufficiency of petitioner’s amended answers, and marked as Exhibit D, a copy of petitioner’s 2008 federal income tax return. The Court will order a further amended response from petitioner to this request.

Request 17

Request: “This amount was a result of claiming \$200,500.00 in gross receipts, \$23,231.00 of Cost of Goods Sold, \$138,619.00 of total expenses, and \$3,264.00 for business use of home for Daitech Tax for the taxable year 2008.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: Respondent attached to the August 24, 2021 motion to review sufficiency of petitioner’s amended answers, and marked as Exhibit D, a copy of petitioner’s 2008 federal income tax return. The Court will order a further amended response from petitioner to this request.

Request 18

Request: “Your taxable year 2009 Federal income tax return was originally filed on or about September 24, 2010.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: If petitioner needs to review documents to verify the date he originally filed his 2009 federal income tax return, then he has failed to make a reasonable inquiry. Further, petitioner failed clarify which part of the request he specifically admits, and which part he specifically denies.

The Court will deem this request admitted.

Request 19

Request: “On your original, individual Federal income tax return for the taxable year 2009, you reported, via Schedule C, \$52,211.00 of profit from Daitech Tax.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: Respondent attached to the August 24, 2021 motion to review sufficiency of petitioner’s amended answers, and marked as Exhibit E, a copy of petitioner’s 2009 federal income tax return. The Court will order a further amended response from petitioner to this request.

Request 20

Request: “This amount was a result of claiming \$5,530.00 in gross receipts, \$30,667.00 of Cost of Goods Sold, \$137,550.00 of other income, and \$60,202.00 of total expenses for Daitech Tax for the taxable year 2009.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: Respondent attached to the August 24, 2021 motion to review sufficiency of petitioner’s amended answers, and marked as Exhibit E, a copy of petitioner’s 2009 federal income tax return. The Court will order a further amended response from petitioner to this request.

Request 21

Request: “The adjustments at issue in this case are based on the original individual income tax returns you filed for the taxable years 2008 and 2009 filed on May 12, 2009 and September 24, 2010, respectively.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court's ruling: Petitioner has not asserted that he made any inquiry for the information requested and he has not met his duty under Tax Court Rule 90(c). Further, petitioner has failed to clarify which part of the request he specifically admits, and which part he specifically denies.

The Court will deem this request admitted.

Request 28

Request: "You co-conspired along with Brown and Samuel to defraud the United States in violation of 18 U.S.C. § 371, an offense to which you pleaded guilty."

Petitioner's amended response: "Admitted in that Pickney did accept a negotiated plea of guilty to end the criminal matter as the United States was at all times relevant in possession of the records necessary to defend the matter. Further the plea was accepted on the basis of lack of finances to successfully [sic] defend the matter. At no time relevant did Pickney conspire with Brown and Samuel and therefore denies this portion of the request."

Court's ruling: Petitioner's denial meets the requirements of Rule 90©. The Court will not deem this request admitted.

The Court will not deem this request admitted.

Request 32

Request: "Deposits into Daitech Tax's business account ending in 6122 for the taxable year 2008 total \$572,882.61."

Petitioner's amended response: "Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered."

Court's ruling: Petitioner failed to respond to this request with any degree of specificity.

The Court will deem this request admitted.

Request 34

Request: “Deposits into Daitech Tax’s business account ending in 6122 for the taxable year 2009 total \$477,590.86.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: Petitioner failed to respond to this request with any degree of specificity.

The Court will deem this request admitted.

Request 41

Request: “Via judgment filed December 2, 2016, you pleaded guilty to Count I of the Superseding Indictment, pleading guilty to conspiring to defraud the United States pursuant to 18 U.S.C. § 371 for the tax years 2008 to 2011.”

Petitioner’s amended response: “Pinckney specifically denies this entire request on the basis that the United States maintains all the records in this matter and he does not have access to any records. Accordingly, the rest of the question is denied on the basis that it cannot be truthfully answered.”

Court’s ruling: Petitioner has not asserted that he made any inquiry for the information requested. He has not met his duty under Tax Court Rule 90(c).

The Court will deem this request admitted.

Given the foregoing, it is

ORDERED that respondent’s August 24, 2021 motion to review sufficiency of petitioner’s amended answers to respondent’s requests for admission is granted inasmuch that the following requests for admission are deemed admitted: 12, 13, 14, 15, 18, 21, 32, 34, and 41 and that petitioner shall, on or before October 7, 2021, file further amended responses to the following requests: 16, 17, 19, and 20. It is further

ORDERED that respondent's August 24, 2021 motion to review sufficiency of petitioner's amended answers to respondent's requests for admission is denied in part insomuch that request 28 of respondent's first request for admissions is not deemed admitted.

(Signed) Richard T. Morrison
Judge